STATEMENT OF H. L. REIGHARD, FEDERAL AIR SURGEON, OFFICE OF AVIATION MEDICINE, FEDERAL AVIATION ADMINISTRATION, BEFORE THE HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, SUBCOMMITTEE ON AVIATION, CONCERNING FAA MEDICAL CERTIFICATION, FOCUSING ON PILOTS' RIGHTS OF APPEALS. MAY 12, 1983

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the Federal Aviation Administration's rule, issued on April 15, 1982, concerning cardiovascular standards for medical certificates. With me is John Cassady, Assistant Chief Counsel for Regulations and Enforcement.

I welcome the opportunity to appear before you to explain the intent and impact of this rule because incorrect information has been generated and disseminated by some opposed to the rule. Before I focus on this specific rule, perhaps I should give the Subcommittee a little background on the medical certification area. In order to fly an airplane, a pilot must hold a valid pilot certificate, which certifies his technical proficiency in handling the aircraft, and a valid airman medical certificate which certifies that the pilot is physically able to perform the duties pertaining to the position for which a certificate is sought. Pursuant to the Federal Aviation Act, the Administrator must issue such certificates in a manner "to assure safety in air commerce." 49 U.S.C. 1422(b).

Under this statutory authority, the Administrator has promulgated a number of medical standards which, if met, entitle an applicant to an airman medical certificate. These standards, set forth in 14 C.F.R. Part 67, are necessarily strict in their requirements that an applicant be free of disease or defects which may affect the ability to safely pilot aircraft. Certain problems are considered to affect air safety to such a degree that a history of the problem alone is enough to disqualify the applicant from issuance of an unrestricted medical certificate. Examples of these are psychosis, epilepsy, drug addiction, and myocardial infarction (heart attack). FAA's authority to disqualify applicants on the basis of history alone in these areas has not been challenged, and under the Federal Aviation Act, NTSB review of individual disqualification cases in these areas is limited to determining whether, in fact, the applicant does have such a history. It does not include a determination by NTSB as to whether such a history should be disqualifying or whether, given such a history, the risks associated with the conditions are nonetheless acceptable.

However, just because a person doesn't qualify for issuance of a medical certificate does not mean that the person will never be able to fly. Rather, the Administrator is authorized by statute to grant exemptions to these requirements when he finds

it to be in the public interest. This exemption authority is now implemented by the "special issuance" provisions of the current regulations.

Under these provisions, any airman found to have a specifically disqualifying condition may request an evaluation by the Federal Air Surgeon, the Chief of the Aeromedical Certification Branch of the Civil Aeromedical Institute, or a Regional Flight Surgeon, for the special issuance of a medical certificate under Federal Aviation Regulations (FAR) Section 67.19. The reviewing official evaluates the individual medical circumstances of a pilot with a disqualifying history, determining whether and in what capacity as an airman the applicant can safely serve, and may impose limitations or medical follow-up requirements necessary to ensure safety given the specific disease or defect involved. Any decision made by an official other than the Federal Air Surgeon may be appealed to the Federal Air Surgeon for review. As Federal Air Surgeon, I utilize a panel of medical experts who are not FAA employees to review cases and make recommendations to me. I then make a final decision, which can be appealed to the United States Court of Appeals by the applicant.

Turning to the area of cardiovascular certification standards, the previous rule, which had been in force since 1959, provided

that, to be qualified for a certificate, an individual must have:

(1) No established medical history or clinical diagnosis of:

(i) Myocardial infarction; or

(ii) Angina pectoris or other evidence of coronary heart disease that the Federal Air Surgeon finds may reasonably be expected to lead to myocardial infarction.

Coronary heart disease refers to the occlusion of the vital arteries which supply the heart muscle with oxygenated blood. It is medically accepted that this disease is progressive, and that it is not presently curable by any means, including coronary artery bypass surgery. The risks of incapacitation associated with coronary heart disease are well known, including crippling chest pain, irregular heart beat, myocardial infarction, and, in a large number of cases, sudden death. Any or all of these dangerous events may occur without warning in any person with the disease, and the specific manifestation is not predictable.

Accordingly, it has been the policy of my predecessors and myself, consistent with this medical knowledge, to find that an

airman with coronary heart disease which has required treatment, or is symptomatic or clinically significant, does not meet the standards for unrestricted airman medical certification. Where possible, we have granted medical certification to such airmen through the exemption process. Through that process, the FAA can require periodic medical reevaluation to detect progression of the disease, which is known to occur in a large percentage of cases.

Recent interpretations of the former cardiovascular standard by the NTSB, however, have not been consistent with the intent of the regulation and the practice of the FAA. In several cases, the NTSB found airmen qualified for unrestricted certification despite a history of significant coronary heart disease resulting in bypass surgery. The certificates the FAA was ordered to issue contained neither functional limitations nor requirements for periodic cardiovascular evaluation of this progressive disease.

Since the language of the regulation apparently was not serving the intended purpose of the original rule, that is, to disqualify airmen with significant coronary heart disease, FAA felt compelled to clarify the rule to bring it in line with the original intent. Based on our statutory responsibility to ensure safety in air commerce, we changed the language of the

cardiovascular standard to make it clear that an airman would be disqualified for "Coronary heart disease that has required treatment or, if untreated, that has been symptomatic or clinically significant." This is consistent with FAA policy under the former regulation.

As we noted in the preamble to the final rule, the rule change reflects the knowledge that no treatment, including surgery, can be relied upon to cure coronary heart disease, to eliminate the significant rate of disease progression, or to eliminate the risks of incapacitation attributable to the disease. The clarification eliminates confusion about the standards that had resulted in the issuance of certificates without the monitoring which is needed to assess the risk to the safe operation of aircraft and to other persons in the air and on the ground.

The assertion by the Civil Pilots for Regulatory Reform (CPRR) that FAA has improperly restricted the purported right of a disqualified applicant to some wide-based NTSB review mandated by Congress is simply wrong, because the same provision which establishes the appeal right limits the scope of NTSB review to "whether the airman meets the pertinent rules, regulations, and standards." Thus, Congress never intended for NTSB to have broader review. Instead, Congress has clearly delineated the

respective agency responsibilities. FAA, utilizing the aeromedical expertise it has developed over the years, promulgates the regulations concerning airman medical certificates, and also makes the initial determination as to whether an individual qualifies for a certificate under the regulations.

An individual denied a certificate may appeal to NTSB for a hearing as to whether FAA properly applied the standard in his case. According to the pertinent statute (49 U.S.C. 1422(b)) "In the conduct of such hearing and in determining whether the airman meets the pertinent rules, regulations, or standards, the National Transportation Safety Board shall not be bound by the findings of fact of the Administrator. At the conclusion of such hearing, the National Transportation Safety Board shall issue its decision as to whether the airman meets the pertinent rules, regulations and standards and the Administrator shall be bound by such decision." Contrary to what CPRR has implied elsewhere, FAA has never indicated that NTSB is bound by the Administrator's findings of fact, or that the Administrator is not bound by NTSB decisions in individual cases. This does not mean, however, that FAA may not or should not change the underlying regulations. NTSB, itself, has recognized this in the Petition of Poole, (NTSB Order EA-1649 at 4 (July 3, 1981)): "The Administrator has the exclusive authority to

promulgate medical standards and to impanel medical experts for the purpose of obtaining recommendations for the updating of existing medical standards. In short, it is the duty of the Board to apply the regulations on a case-by-case basis without entertaining attacks on their validity." Thus, FAA did not flout Congressional intent by changing its regulations. Rather, it fulfilled its mandate under 49 U.S.C. 1422(b) to issue airman medical certificates in a manner which assures safety in air commerce.

We have not, in any way, diminished an airman's Congressionally intended right of appeal to the NTSB. Under our regulatory change, the NTSB is still expected to exercise its authority by reviewing whether the FAA has properly applied the regulation to an applicant. What has changed is that the regulatory requirements to be applied by the NTSB have been more clearly stated by the FAA. Congress has not provided NTSB with the authority to determine what the regulations should be. Of course, NTSB does have the right, as does any other interested party, to file comments in the docket on an FAA rulemaking action, and they do so in many such proceedings. Significantly, NTSB did not comment during the rulemaking to revise the cardiovascular standards.

The most important thing to recognize in dealing with this issue, Mr. Chairman, is that the FAA's concern in the area, as mandated by statute, is air safety. My professional judgment is that in the interests of safety, we cannot issue an unrestricted medical certificate to a person with significant coronary heart disease, which is known to be progressive and cannot be eliminated or reversed by surgery. Such an issuance of an unrestricted certificate would pose a significant risk to air safety. However, this does not mean that such persons are not fit to fly under any conditions.

Formerly, an individual who failed to qualify for an unrestricted certificate could apply for an exemption. This has been supplanted by the more streamlined special issuance procedure I outlined at the outset of my statement. It is through this process that FAA medical experts (and expert consultants who advise me) determine whether there are appropriate conditions or restrictions that should be placed on the certificate which will enable an applicant to pilot an aircraft, yet still be consistent with our safety mandate. Such conditions typically include periodic testing to determine the progression of the disease (e.g., how occluded the arteries are), stress tests, and the like, which will allow a determination as to whether the applicant may, within appropriate limitations and conditions, safely pilot an aircraft.

This policy is fully consistent with the findings of the Eighth Bethesda Conference of the American College of Cardiology (1975), whose report stated that "If 1 year after coronary arterial surgery, a commercial pilot does not manifest angina, symptoms of heart failure, arrythmias or evidence of ischemia on exercise testing, and cardiac catheterization reveals patent vein grafts without progression of distal coronary artery disease and with satisfactory ventricular functions, then certification for flying should be considered." This report went on to stress the need for rigorous medical follow-up of individuals so certified.

My staff and experts with whom we consult look at the facts of each individual case in considering whether appropriate testing and monitoring of the condition is possible, whether appropriate restrictions and conditions can be devised, and, ultimately, whether a special issuance can be made consistent with air safety. Appropriately, under the statute, NTSB does not impose any conditions or limitations on a medical certificate; rather, because of its limited quasi-judicial role, it orders an unrestricted certificate or no certificate at all. We feel that the interests of air safety are better served in this area by the special issuance procedure.

This exemption or special issuance process is not merely a theoretical avenue open to applicants, but one which has been well used. Over the past years, FAA has issued numerous exemptions in the cardiovascular area. Further, an applicant who has been turned down for an exemption may appeal the FAA's decision to the U.S. Court of Appeals.

As I have indicated, our rule change did not alter the substantive bases for disqualification for cardiovascular problems; instead, it clarified the intent of FAA's cardiovascular standards, that is, no person found qualified by the prior standard will be found unqualified under the present standard. In the interest of reviewing the standards themselves, the FAA has initiated an effort with full public participation to comprehensively review all medical standards in Part 67.

To summarize FAA's position, Mr. Chairman, we initiated this rulemaking in order to correct a deficiency brought about by the manner in which our regulation, as written, was being interpreted. These interpretations led to the Board-ordered certification of certain airmen for unrestricted medical certificates, despite the fact that they had demonstrably significant coronary heart disease which is known to be

progressive. This poses an unacceptable risk to air safety. We believe that the way to handle any re-certification of such individuals is through the special issuance process, which involves expert evaluations and can tailor certificates with appropriate restrictions and conditions, such as periodic medical testing, to ensure that the persons involved are, indeed, healthy enough to continue to pilot aircraft. Aviation safety demands nothing less.

That completes my prepared statement, Mr. Chairman. At this time, Mr. Cassady and I would be pleased to respond to your questions.